

to do so would result in the forfeiture of the entire authorization. Any channels still unconstructed at the end of five years would be recovered.

42. The construction standard proposed by the FCC is similar to AMTA's approach in that EMSP licensees would be required ultimately to cover 80%, rather than 75%, of either the population or the land area. Because the FCC has elected not to mandate any particular technology level, existing licensees may consider already operational facilities in satisfying some or all of the requirement. A licensee would be considered to be serving an area if it were providing a signal strength of 40 dBu or greater, however, not every channel included in the EMSP system would have to meet that coverage standard. As noted earlier, EMSP licensees would have one year to construct unless they obtained extended implementation authority for up to five years, subject to posting a performance bond or funding an escrow account. A licensee that failed to satisfy the requirement at the end of five years would be permitted to continue operating constructed facilities, but would lose the right to reuse the EMSP frequencies throughout the designed area. Notice ¶39.

43. AMTA generally supports the FCC's proposal. The 80% coverage requirement is only minimally greater than that proposed in the Blueprint, and the 40 dbu signal strength criterion is the current coverage standard for SMR systems. Moreover, the Association is persuaded that periodic construction benchmarks will not be needed, even for second stage EMSP licensees, under the

FCC's approach. All applicants will be required to submit detailed cost estimates for their proposed systems. AMTA has also recommended that site-specific system designs should be required at the application stage to ensure that the applicant is capable of meeting the construction requirements, and to enable the FCC and other parties to assess the reasonableness of the associated cost estimates. Those safeguards will limit participation to bona fide applicants. Licensees that then construct in one year will need no further, interim review. Those that seek extended implementation could be obligated to post a performance bond or fund an escrow account covering the costs of implementing all unconstructed stations, assuming those or comparable mechanisms are determined to be permissible for FCC use. Under these circumstances, construction benchmarking should not be necessary.¹⁷

44. The Notice proposes that EMSP licensees protect existing co-channel systems within and outside of their MTA in accordance with the requirements of FCC Rule Section 90.621(b). The mileage separations specified in that rule are based on a 40/22 dbu criterion. EMSP licensees that satisfy that requirement would be able to secure conditional licenses for new or modified stations, thereby facilitating the expeditious deployment of frequencies and facilities throughout the system. Additionally, the FCC recommends

¹⁷ Interim benchmarking will not be necessary only if the FCC does require the posting of a performance bond or funding of an escrow account which would be forfeited if the licensee fails to complete construction. Should the FCC determine that it cannot impose those obligations, it will be necessary for the agency to review on a periodic basis the licensee's progress toward system implementation.

that co-channel interference between EMSP systems in adjacent markets be controlled by limiting the signal strength at the boundary to no more than 22 dbu unless the adjacent market licensee concurs. EMSP licensees which include existing facilities within their wide-area system would not be required to reduce the signal strength of such stations to satisfy that limitation, but they would not be entitled to protection from the adjacent market

consolidated comments, is the minimum needed to ensure a satisfactory quality of service and coverage.¹⁹ Thus, the Association concurs with the FCC's proposed co-channel protection standard. However, as also noted in the recent filing, actual operating experience with EMSP systems, particularly those employing digital technology in a multi-site, low power configuration, may demonstrate that a different level of protection is needed for such systems. AMTA reserves the right, therefore, to reconsider its position on that aspect of the Notice based on data generated from real world system operations.

47. Finally, the FCC proposes to prohibit the assignment of all EMSP licenses for at least three years, and in no case prior to completion of construction. Partial assignments of EMSP frequencies, but not portions of the MTA, would also be permitted after construction. Licensees would be free to lease their EMSP spectrum at any time, and to include leased spectrum in satisfying their construction requirements. Notice ¶42.

48. The Association fully supports the FCC's determination to prevent trafficking in Commission licenses. It therefore supports the proposed transfer prohibition for new licensees participating in the second stage of EMSP licensing. The policy considerations are different, however, for existing licensees of constructed systems who obtain EMSP grants. In those cases, the licensee has already placed its authorized frequencies in operation and is serving customers. The EMSP license is, in a sense, ancillary to

¹⁹ Id.

the underlying, traditional stations since they are the predicate for the applicant's stage one eligibility and will presumably be part of the EMSP system itself. In the Association's opinion, the assignment or transfer of the underlying stations and the associated EMSP grant does not constitute trafficking in FCC licenses and should be permitted at any point, even prior to completion of EMSP construction.

IV. CONCLUSION

49. AMTA is pleased with the Commission's expeditious action on the Association's Petition for Rule Making regarding the implementation of wide-area SMR systems. The instant Notice outlines a regulatory structure consistent with that proposed by AMTA which will facilitate the next stage of SMR industry development. The Association urges the FCC to proceed promptly in adopting the EMSP rules proposed in the Notice, as modified in the instant Comments.

CERTIFICATE OF SERVICE

I, M.A. Spinks, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify, that I have on this 19th day of July, 1993 caused to have hand delivered a copy of the foregoing **COMMENTS** to the following:

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